

In Re High-Tech Employee Antitrust Litigation - May 15, 2013

<p>SHEET 1</p> <p>UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION</p> <p>BEFORE THE HONORABLE LUCY H. KOH, JUDGE</p> <p>IN RE: HIGH-TECH EMPLOYEE) NO. C 11-02509 LHK ANTITRUST LITIGATION) PAGES 1 - 50)) SAN JOSE, CALIFORNIA) WEDNESDAY, MAY 15, 2013</p> <p>TRANSCRIPT OF PROCEEDINGS</p> <p>APPEARANCES:</p> <p>FOR PLAINTIFFS: LIEFF, CABRASER, HEIMANN & BERNSTEIN 275 BATTERY STREET, 30TH FLOOR SAN FRANCISCO, CALIFORNIA 94111</p> <p>BY: LISA J. CISNEROS, KELLY M. DERMODY, BRENDAN P. GLACKIN, DEAN M. HARVEY, ATTORNEYS AT LAW</p> <p>JOSEPH SAVERI LAW FIRM 255 CALIFORNIA STREET, SUITE 450 SAN FRANCISCO, CALIFORNIA 94111</p> <p>BY: JAMES G.B. DALLAL, JOSEPH R. SAVERI, ATTORNEYS AT LAW</p> <p>(APPEARANCES CONTINUED NEXT PAGE)</p> <p>REPORTED BY: RAYNEE H. MERCADO, CSR NO. 8258</p> <p>PROCEEDINGS REPORTED BY ELECTRONIC/MECHANICAL STENOGRAPHY; TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.</p>	<p>3</p> <p>1 WEDNESDAY, MAY 15, 2013 2:08 P.M. 2 PROCEEDINGS 3 THE CLERK: CALLING CASE NO. C11-02509 LHK, IN RE: 4 HIGH-TECH EMPLOYEE ANTITRUST LITIGATION. 5 MS. DERMODY: GOOD AFTERNOON, YOUR HONOR. YOUR HONOR 6 KELLY DERMODY, LIEF CABRASER. AND WITH ME FROM MY FIRM ARE 7 BRENDAN GLACKIN, LISA CISNEROS, AND DEAN HARVEY. 8 MR. SAVERI: GOOD AFTERNOON, YOUR HONOR. JOSEPH 9 SAVERI, JOSEPH SAVERI LAW FIRM, FROM SAN FRANCISCO. AND JAMES 10 DALLAL IS WITH ME THIS AFTERNOON. 11 MR. MITTELSTAEDT: GOOD AFTERNOON, YOUR HONOR. FOR 12 ADOBE AND INTUIT, BOB MITTELSTAEDT AND CATE ZENG, Z-E-N-G. 13 THE COURT: OKAY. THANK YOU. 14 MR. NIELDS: YOUR HONOR, FOR DEFENDANT PIXAR, JOHN 15 NIELDS AND EMILY HENN FROM COVINGTON. 16 THE COURT: OKAY. I'M NOT -- IS THAT JOHN WILSON? 17 I'M SORRY. DIDN'T CATCH THAT -- 18 MR. NIELDS: JOHN NIELDS, YOUR HONOR. 19 THE COURT: OH, I'M SORRY. 20 MR. NIELDS: N-I-E-L-D-S. 21 THE COURT: N-I-E-L-D-S. ALL RIGHT. THANK YOU. 22 MR. NIELDS: THANK YOU. 23 THE COURT: AND FOR MR. SAVERI, YOU'RE HERE WITH 24 JAMES -- AND WHAT WAS THE LAST NAME, PLEASE? 25 MR. SAVERI: DALLAL, YOUR HONOR, D-A-L-L-A-L.</p>
<p>A P P E A R A N C E S (CONT'D.)</p> <p>FOR DEFENDANTS ADOBE AND INTUIT: JONES DAY 555 CALIFORNIA STREET, 26TH FLOOR SAN FRANCISCO, CALIFORNIA 94104</p> <p>BY: ROBERT A. MITTELSTAEDT,</p> <p>JONES DAY 1755 EMBARCADERO ROAD PALO ALTO, CALIFORNIA 94303</p> <p>BY: CATHERINE T. ZENG, ATTORNEY AT LAW</p> <p>FOR DEFENDANT APPLE, INC.: O'MELVENY & MYERS EMBARCADERO CENTER WEST TWO EMBARCADERO CENTER, 28TH FLOOR SAN FRANCISCO, CALIFORNIA 94111-3823</p> <p>BY: CHRISTINA J. BROWN, GEORGE RILEY, ATTORNEYS AT LAW</p> <p>FOR DEFENDANT GOOGLE, INC.: MAYER BROWN LLP TWO PALO ALTO SQUARE, SUITE 300 3000 EL CAMINO REAL PALO ALTO, CALIFORNIA 94306-2112</p> <p>BY: LEE H. RUBIN, ATTORNEY AT LAW</p> <p>FOR DEFENDANT INTEL CORP.: BINGHAM MCCUTCHEN LLP THREE EMBARCADERO CENTER SAN FRANCISCO, CALIFORNIA 94111-4607</p> <p>BY: FRANK HINMAN, ATTORNEY AT LAW</p> <p>FOR DEFENDANT LUCASFILM LTD.: KEKER & VAN NEST 633 BATTERY STREET SAN FRANCISCO, CALIFORNIA 94111-1809</p> <p>BY: DANIEL E. PURCELL, ATTORNEY AT LAW</p> <p>FOR DEFENDANT PIXAR: COVINGTON & BURLING LLC 1201 PENNSYLVANIA AVENUE N.W. WASHINGTON, D.C. 20004</p> <p>BY: JOHN W. NIELDS, JR., ATTORNEY AT LAW</p> <p>COVINGTON & BURLING LLC 333 TWIN DOLPHIN DRIVE, SUITE 700 REDWOOD SHORES, CALIFORNIA 94065</p> <p>BY: EMILY J. HENN, ATTORNEY AT LAW</p> <p>--000--</p>	<p>4</p> <p>1 THE COURT: OKAY. THANK YOU. 2 MR. SAVERI: THANK YOU, YOUR HONOR. 3 MR. RUBIN: GOOD AFTERNOON, YOUR HONOR. LEE RUBIN 4 FROM MAYER BROWN FOR GOOGLE. 5 THE COURT: GOOD AFTERNOON. 6 MR. RUBIN: GOOD AFTERNOON. 7 MR. HINMAN: YOUR HONOR, FRANK HINMAN WITH BINGHAM 8 FOR INTEL. 9 THE COURT: OKAY. GOOD AFTERNOON. 10 MR. PURCELL: YOUR HONOR, DAN PURCELL FROM KECKER & 11 VAN NEST FOR LUCASFILM. 12 THE COURT: OKAY. GOOD AFTERNOON. 13 MR. RILEY: GOOD AFTERNOON, YOUR HONOR. GEORGE RILEY 14 OF O'MELVENY & MYERS FOR APPLE. I'M JOINED BY MY COLLEAGUE 15 CHRISTINA BROWN. 16 THE COURT: GOOD AFTERNOON. 17 AND YOU'RE HERE FROM -- MR. MITTELSTAEDT AND MS. ZENG ARE 18 HERE FOR ADOBE AS WELL. 19 MR. MITTELSTAEDT: YES. 20 THE COURT: OKAY. 21 OKAY. GREAT. THANK YOU. THANK YOU ALL FOR COMING. 22 THIS IS WHAT I WOULD LIKE TO DO. WHEN IS THE HEARING ON 23 THE MOTION REGARDING MS. SANBERG'S DEPOSITION? HAS THAT 24 ALREADY BEEN HEARD? 25 MS. DERMODY: YOUR HONOR, KELLY DERMODY FOR THE</p>

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<p>SHEET 2</p> <p>5</p> <p>1 PLAINTIFFS.</p> <p>2 SINCE WE FIRST SERVED THE SUBPOENA FOR THAT DEPOSITION, WE</p> <p>3 HAVE BEEN WORKING VERY COOPERATIVELY WITH MS. SANBERG'S</p> <p>4 COUNSEL TO SEE IF IT CAN BE AVOIDED. THAT IS STILL IN</p> <p>5 PROCESS, SO WE'LL REPORT TO THE COURT HOW THAT GETS RESOLVED.</p> <p>6 THE COURT: OH, SO IT HASN'T BEEN SET FOR A HEARING?</p> <p>7 MS. DERMODY: THAT'S CORRECT, YOUR HONOR.</p> <p>8 THE COURT: AT YOUR REQUEST?</p> <p>9 MS. DERMODY: AT HER COUNSEL'S REQUEST.</p> <p>10 THE COURT: WELL, YOU NEED TO BRING THAT TO A CLOSE,</p> <p>11 AND YOU JUST NEED TO HAVE THE HEARING AND GET THE RULING.</p> <p>12 MS. DERMODY: YES, I THOUGHT IT WOULD BE CLOSED BY</p> <p>13 YESTERDAY, YOUR HONOR. I APOLOGIZE. I THINK IT WILL BE</p> <p>14 CLOSED THIS WEEK.</p> <p>15 THE COURT: OKAY. BECAUSE, YOU KNOW, YOU ALREADY HAD</p> <p>16 TO FILE YOUR CLASS CERT OPENING, AND SO I DON'T SEE ANY POINT</p> <p>17 IN FURTHER DELAY. I THINK YOU'RE GOING TO GET SOME HOURS WITH</p> <p>18 HER, SO WHY ARE YOU WAITING?</p> <p>19 MS. DERMODY: WE AREN'T WAITING, YOUR HONOR. HER</p> <p>20 COUNSEL HAS ASKED IF THERE'S A WAY TO COLLECT THE INFORMATION</p> <p>21 ALTERNATIVE TO A DEPOSITION. AND SO WE HAVE BEEN TRYING TO</p> <p>22 SEE IF THAT'S POSSIBLE TO AVOID PUTTING HER THROUGH THAT</p> <p>23 EFFORT IF IT'S POSSIBLE. AND IF IT'S POSSIBLE WE WILL BE</p> <p>24 AGREEABLE TO IT.</p> <p>25 BUT I THINK WE'RE STILL TRYING TO WORK THAT OUT WITH HER</p>	<p>7</p> <p>1 FOR THAT. AND, YOU KNOW, THIS IS A CASE WHERE THE PLAINTIFFS</p> <p>2 CHOSE TO SUE SEVEN SEPARATE COMPANIES. THEY AGREE THAT IF</p> <p>3 THEY CHOSE TO SUE JUST ONE, THAT DEFENDANT WOULD HAVE 25</p> <p>4 PAGES. BUT WHAT THEY SAY IS THAT BECAUSE THEY SUED 7, WE</p> <p>5 SHOULD ONLY GET 7 INTO 25 OR 3. YOUR HONOR NOW SUGGESTS THAT</p> <p>6 WE GET FIVE, BUT, YOUR HONOR, I -- I REALLY DO NOT THINK THAT</p> <p>7 5 IS A SUFFICIENT LENGTH FOR A DEFENDANT IN THIS -- YOU KNOW,</p> <p>8 BIG CASE THAT'S VERY IMPORTANT TO THESE DEFENDANTS AND</p> <p>9 IMPORTANT TO THE PLAINTIFFS -- I DON'T THINK 5 PAGES IS -- IS</p> <p>10 ENOUGH. WE'VE ASKED FOR 15 PAGES. WE WILL TRY AND DO IT</p> <p>11 SHORT OF 15 PAGES. WE UNDERSTAND --</p> <p>12 THE COURT: LET ME ASK YOU, DO YOU REALLY GENUINELY</p> <p>13 BELIEVE THIS IS A SUMMARY JUDGMENT CASE?</p> <p>14 MR. MITTELSTAEDT: YES.</p> <p>15 THE COURT: AND I'M QUITE FAMILIAR WITH THE FACTS IN</p> <p>16 THIS CASE AFTER THE MOTION TO DISMISS AND THE CLASS CERT. I</p> <p>17 DON'T THINK THIS IS A SUMMARY JUDGMENT CASE.</p> <p>18 MR. MITTELSTAEDT: YOUR HONOR --</p> <p>19 THE COURT: THERE ARE A LOT OF FACTS HERE. THIS IS A</p> <p>20 VERY RICH, RICH RECORD.</p> <p>21 MR. MITTELSTAEDT: THERE --</p> <p>22 THE COURT: YOU DON'T THINK THERE'S ONE MATERIAL</p> <p>23 FACTUAL DISPUTE THAT CAN BE FOUND AS TO EACH DEFENDANT?</p> <p>24 MR. MITTELSTAEDT: YOUR HONOR, I THINK THERE ARE A</p> <p>25 LOT OF FACTS AS TO THE BILATERAL AGREEMENTS THAT ONE DEFENDANT</p>
<p>6</p> <p>1 COUNSEL, AND IT'S REALLY THEIR SCHEDULE, NOT OUR SCHEDULE,</p> <p>2 THAT HAS CAUSED THAT. BUT WE WILL LET THEM KNOW THAT THIS HAS</p> <p>3 TO COME TO A CLOSE.</p> <p>4 THE COURT: YOU SHOULD GO FORWARD WITH THE MOTION. I</p> <p>5 THINK YOU WILL GET A FEW HOURS. YOU WILL NOT GET A FULL DAY,</p> <p>6 BUT I THINK YOU WILL GET A FEW HOURS, SO I DON'T SEE ANY POINT</p> <p>7 IN DELAYING THIS ANY FURTHER. YOU NEED TO MAKE A DECISION.</p> <p>8 EITHER YOU DON'T NEED HER OR YOU DO. AND IF YOU DO NEED HER,</p> <p>9 SET THE HEARING AND GET THE RULING.</p> <p>10 MS. DERMODY: OKAY.</p> <p>11 THE COURT: OKAY?</p> <p>12 MS. DERMODY: YES.</p> <p>13 THE COURT: OKAY. AS FAR AS DISPOSITIVE MOTIONS, I</p> <p>14 LIKE TO SET A LIMIT OF EVERY DEFENDANT GETS 5 PAGES, SO 35,</p> <p>15 35, 25, AND YOU CAN DECIDE HOW YOU WANT TO USE THAT, WHETHER</p> <p>16 FOR COMMON ISSUES OR FOR SEPARATE ISSUES. PLAINTIFFS' MOTION</p> <p>17 WILL ONLY BE 25, 25, 15.</p> <p>18 DOES ANYONE WANT TO BE HEARD ON THAT? BUT I'M NOT GOING</p> <p>19 TO DO EIGHT DEFENSE SUMMARY JUDGMENTS.</p> <p>20 MR. MITTELSTAEDT: YOUR HONOR, WE WOULD -- OUR PLAN</p> <p>21 WOULD BE TO HAVE A JOINT MOTION ON WHATEVER ISSUES WE CAN DEAL</p> <p>22 WITH JOINTLY. BUT EACH DEFENDANT WOULD LIKE TO HAVE THE RIGHT</p> <p>23 TO FILE A SEPARATE BRIEF ON THE GLOBAL CONSPIRACY AND WHETHER</p> <p>24 THEY PARTICIPATED IN IT.</p> <p>25 WE SET FORTH IN OUR STATEMENT WHY WE THINK THERE'S A BASIS</p>	<p>8</p> <p>1 HAD WITH ANOTHER. I THINK THERE ARE A LOT OF FACTS AS TO THE</p> <p>2 REASON THAT THAT DEFENDANT ENTERED INTO THE BILATERAL, BUT --</p> <p>3 AND THE JUSTICE DEPARTMENT AFTER ALL, ONLY ALLEGED BILATERALS.</p> <p>4 JUSTICE DEPARTMENT DID NOT ALLEGE THE GLOBAL. AND SO WHAT</p> <p>5 THESE PLAINTIFFS HAVE TO DO IS SHOW --</p> <p>6 THE COURT: BUT I DENIED A MOTION TO DISMISS THE</p> <p>7 GLOBAL --</p> <p>8 MR. MITTELSTAEDT: AND, YOUR HONOR --</p> <p>9 THE COURT: -- OVERARCHING CONSPIRACY.</p> <p>10 MR. MITTELSTAEDT: YES. AND, YOUR HONOR, WE'VE TAKEN</p> <p>11 THAT THOROUGHLY INTO ACCOUNT. AND ONE OF THE PRINCIPAL BASES</p> <p>12 FOR YOUR DECISION WAS THE PLAINTIFFS ALLEGED THAT THESE SIX</p> <p>13 BILATERAL AGREEMENTS WERE ENTERED INTO SIMULTANEOUSLY, THEIR</p> <p>14 WORD, ON IDENTICAL TERMS. AND IN DENYING THE MOTION TO</p> <p>15 DISMISS, YOUR HONOR FOUND BASICALLY THAT WHEN THESE --</p> <p>16 THE COURT: BUT THE RECORD IS SO MUCH RICHER THAN</p> <p>17 THAT. LOOK AT THE CLASS CERT ORDER.</p> <p>18 MR. MITTELSTAEDT: BUT --</p> <p>19 THE COURT: I THINK THERE'S ABUNDANT EVIDENCE THAT</p> <p>20 THERE WAS AN OVERALL (SIC) ARCHING CONSPIRACY SUFFICIENT TO GO</p> <p>21 TO TRIAL AT LEAST. THEY MAY ULTIMATELY LOSE, BUT SUFFICIENT</p> <p>22 TO GO TO TRIAL.</p> <p>23 SO LET -- LET ME WORK OUT SOMETHING WITH YOU. WHAT WOULD</p> <p>24 THE COMMON ISSUES BE?</p> <p>25 MR. MITTELSTAEDT: BUT, YOUR HONOR, COULD I JUST ADD</p>

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<p>SHEET 3</p> <p>9</p> <p>1 ONE SENTENCE TO THAT, BECAUSE I THINK THIS IS THE PUNCHLINE?</p> <p>2 THE COURT: UM-HMM.</p> <p>3 MR. MITTELSTAEDT: THE PLAINTIFFS NOW SAY IN THEIR</p> <p>4 INTERROGATORY RESPONSES AND IN THEIR CLASS CERT, RENEWED</p> <p>5 MOTION, THAT LUCASFILM AND PIXAR ENTERED INTO THE AGREEMENT</p> <p>6 NOT IN 2005 SIMULTANEOUSLY WITH EVERYONE ELSE, BUT THAT THEY</p> <p>7 ENTERED INTO THEIR AGREEMENT IN 1985. AND THEN THEY SAY THE</p> <p>8 NEXT COMPANY DIDN'T JOIN THE CONSPIRACY FOR 20 OR 21 YEARS.</p> <p>9 AND SO WHEN THEY LED YOUR HONOR TO BELIEVE THAT THESE</p> <p>10 AGREEMENTS WERE ALL SIMULTANEOUS AND THEREFORE MUST HAVE BEEN</p> <p>11 PART OF AN AGREEMENT BY EVERYBODY TO ENTER INTO THE</p> <p>12 AGREEMENTS --</p> <p>13 THE COURT: OKAY. WELL --</p> <p>14 MR. MITTELSTAEDT: -- IT'S NOT RIGHT.</p> <p>15 THE COURT: I'M SORRY. I'M SORRY. WHAT -- WHAT ARE</p> <p>16 THE COMMON ISSUES THAT WOULD NEED TO BE RAISED ON SUMMARY</p> <p>17 JUDGMENT?</p> <p>18 MR. MITTELSTAEDT: I THINK ONE COMMON ISSUE FOR THE</p> <p>19 BRIEF WOULD BE THE LAW ON HOW MUCH EVIDENCE A PLAINTIFF NEEDS</p> <p>20 IN A CASE LIKE THIS, WHICH IS ALLEGING A HUB AND SPOKES --</p> <p>21 THE COURT: UM-HMM.</p> <p>22 MR. MITTELSTAEDT: -- THE RIMLESS CONSPIRACY, I THINK</p> <p>23 ONE OF THE COMMON ISSUES TO BE BRIEFED WOULD BE THE LAW ON</p> <p>24 THAT.</p> <p>25 THE COURT: OKAY.</p>	<p>11</p> <p>1 SO I THINK THAT'S ANOTHER AREA. THAT ONE MAY BE COMMON.</p> <p>2 I THINK THE PRINCIPAL INDIVIDUAL ONE, YOUR HONOR, WOULD BE</p> <p>3 WHERE EACH DEFENDANT WANTS TO SAY WE DON'T THINK THERE WAS A</p> <p>4 GLOBAL CONSPIRACY, BUT WHAT WE KNOW FOR SURE IS THAT THERE'S</p> <p>5 NOT SUFFICIENT EVIDENCE THAT WE PARTICIPATED IN IT.</p> <p>6 AND LUCASFILM, FOR EXAMPLE, WILL WANT TO ARGUE THAT IN</p> <p>7 1985 WHEN THEY ENTERED INTO THEIR AGREEMENT WITH PIXAR, THEY</p> <p>8 COULD CARE LESS ABOUT WHAT ANYBODY WAS GOING TO DO 21 YEARS</p> <p>9 LATER.</p> <p>10 FOR MY CLIENT, FOR ADOBE, I WANT TO ARGUE THAT BASED ON</p> <p>11 WHAT THEY SAY IN THEIR CLASS MOTION AND IN THEIR INTERROGATORY</p> <p>12 RESPONSE, THEY DON'T HAVE ANY EVIDENCE THAT -- THAT WE CARED</p> <p>13 IN THE SLIGHTEST WHAT PIXAR WAS DOING OR LUCASFILM OR INTEL OR</p> <p>14 ANYBODY ELSE. THE ALLEGED AGREEMENT WAS ADOBE AND APPLE, AND</p> <p>15 THAT'S IT.</p> <p>16 SO I -- I THINK THE QUESTION REALLY IS HOW MANY PAGES</p> <p>17 SHOULD EACH DEFENDANT GET TO LAY OUT ITS INDIVIDUAL FACTS AND</p> <p>18 SHOW WHY IT'S NOT PART OF A GLOBAL CONSPIRACY. WE ASKED FOR</p> <p>19 15. THE PLAINTIFFS AT SOME POINT GOT UP TO 7. I THINK 15'S</p> <p>20 THE RIGHT NUMBER. COULD WE DO IT IN 12 PAGES? IF YOUR HONOR</p> <p>21 TELLS US TO DO IT IN 12 PAGES, WE CAN.</p> <p>22 WHAT I WAS GOING TO SAY BEFORE, YOUR HONOR, IS WE</p> <p>23 UNDERSTAND YOUR WORKLOAD. WE UNDERSTAND IT'S NOT IN OUR</p> <p>24 INTEREST TO FILE A SINGLE PAGE LONGER THAN WE NEED TO. THIS</p> <p>25 IS AN EXPERIENCED GROUP OF LAWYERS. I THINK OUR TRACK RECORD</p>
<p>10</p> <p>1 MR. MITTELSTAEDT: I THINK --</p> <p>2 THE COURT: LIKE A SUFFICIENCY OF THE EVIDENCE TO GO</p> <p>3 THE TRIAL?</p> <p>4 MR. MITTELSTAEDT: YES. AND I THINK, YOUR HONOR,</p> <p>5 THEY -- YES.</p> <p>6 THE COURT: OKAY.</p> <p>7 MR. MITTELSTAEDT: THEY DON'T HAVE ANY DIRECT</p> <p>8 EVIDENCE OF A GLOBAL CONSPIRACY. THEY HAVE WHAT THEY SAY IS</p> <p>9 CIRCUMSTANTIAL, AND I THINK THE QUESTION FOR THE COURT IS</p> <p>10 WHETHER THEIR CIRCUMSTANTIAL EVIDENCE IS SUFFICIENT.</p> <p>11 I THINK ANOTHER POTENTIAL AREA -- AND, YOUR HONOR, THIS IS</p> <p>12 GOING TO DEPEND ON HOW THE CASE SHAKES OUT --</p> <p>13 THE COURT: OKAY.</p> <p>14 MR. MITTELSTAEDT: -- WHAT YOUR HONOR FINDS ON</p> <p>15 SUMMARY JUDGMENT OR -- OR ON CLASS CERT AND THEN WHAT THEIR</p> <p>16 EXPERTS DO ON THE MERITS. BUT THERE -- ANOTHER AREA MAY BE</p> <p>17 SUFFICIENCY OF THEIR EVIDENCE ON IMPACT. DO THEY HAVE</p> <p>18 EVIDENCE OF IMPACT ON THE FIVE NAMED PLAINTIFFS? IF THERE'S A</p> <p>19 CLASS, IS THERE SUFFICIENT EVIDENCE OF IMPACT?</p> <p>20 YOU KNOW, THE ISSUE ON CLASS CERT IS HAVE THEY PROPOSED A</p> <p>21 VALID METHOD. IF YOUR HONOR FINDS THEY HAVEN'T, THEN I THINK</p> <p>22 THAT SUGGESTS THERE MIGHT BE A SUMMARY JUDGMENT MOTION ON THE</p> <p>23 INDIVIDUAL CLAIMS.</p> <p>24 IN ANY EVENT, THE QUESTION ON SUMMARY JUDGMENT WOULD BE</p> <p>25 HAVE THEY ACTUALLY SHOWN IMPACT, NOT JUST A METHOD BUT IMPACT.</p>	<p>12</p> <p>1 SO FAR IS PRETTY GOOD. WE'VE JOINED IN BRIEFS WHERE WE CAN.</p> <p>2 LUCASFILM FILED A SEPARATE MOTION TO DISMISS ON THEIR</p> <p>3 FEDERAL ENCLAVE DEFENSE, SO WE'RE GOING TO TRY TO KEEP THE</p> <p>4 PAGES DOWN, BUT BECAUSE THERE'S A LOT OF THINGS WE DON'T KNOW</p> <p>5 ABOUT WHAT THE PLAINTIFFS ARE GOING TO DO WITH THEIR CASE, I</p> <p>6 THINK 15 PAGES WAS -- WAS THE RIGHT THING TO ASK FOR. AS I</p> <p>7 SAY, WE COULD LIVE WITH 12 PAGES.</p> <p>8 THE COURT: WHAT ABOUT THE COMMON ISSUES? THAT</p> <p>9 REALLY SOUNDS LIKE -- QUITE OVERLAPPING WITH CLASS CERT.</p> <p>10 MR. MITTELSTAEDT: WELL, I THINK THE -- THE COMMON</p> <p>11 ISSUE --</p> <p>12 THE COURT: UM-HMM.</p> <p>13 MR. MITTELSTAEDT: I MEAN, THE SUMMARY JUDGMENT, THE</p> <p>14 COMMON BRIEF WOULD INCLUDE THE LAW ON GLOBAL CONSPIRACY, AND</p> <p>15 THAT'S -- THAT'S REALLY NOT IN THE CLASS CERT.</p> <p>16 I THINK IT WOULD ALSO INCLUDE THE QUESTION OF WHETHER THE</p> <p>17 BILATERAL AGREEMENTS -- TO THE EXTENT THE BILATERAL AGREEMENTS</p> <p>18 REMAIN IN THE CASE, WHETHER THEY ARE TO BE JUDGED UNDER THE</p> <p>19 RULE OF REASON OR PER SE. I THINK THAT'S PROBABLY A COMMON</p> <p>20 ISSUE.</p> <p>21 AND AS I SAY, THERE MAY BE MORE ON IMPACT DEPENDING ON</p> <p>22 WHAT THE PLAINTIFFS DO.</p> <p>23 THE COURT: ALL RIGHT. WELL, THE IMPACT SEEMS LIKE</p> <p>24 THAT'S CERTAINLY GOING TO COME UP IN CLASS CERT.</p> <p>25 MR. MITTELSTAEDT: I AGREE, YOUR HONOR. WE WILL</p>

In Re High-Tech Employee Antitrust Litigation - May 15, 2013

<p>SHEET 4</p> <p>13</p> <p>1 LEARN A LOT ABOUT YOUR HONOR'S VIEWS ON THAT, AND MAYBE 2 THERE'S A SUMMARY JUDGMENT MOTION THERE, MAYBE THERE ISN'T. 3 BUT WHAT WE'RE PLANNING FOR HERE IS -- I MEAN, WE DON'T WANT 4 TO COME BACK AND -- AND ASK THE COURT FOR MORE PAGES. AND AS 5 I SAY, WE'RE NOT GOING TO USE THESE PAGES JUST TO -- TO FILL 6 THEM UP FOR -- FOR, YOU KNOW, ANY PURPOSE. 7 AND WHAT WE'RE GOING TO TRY AND DO IS HAVE, YOU KNOW, AS 8 MUCH AS OF THIS -- AS MUCH AS WE CAN AGREE TO THAT'S COMMON IN 9 A JOINT BRIEF BECAUSE I THINK THAT MAKES IT EASIER FOR THE 10 COURT, BUT ON THIS INDIVIDUAL ISSUE ABOUT WHETHER THERE'S 11 SUFFICIENT EVIDENCE AS TO AN INDIVIDUAL DEFENDANT, THAT'S 12 WHERE I THINK THE INDIVIDUAL BRIEFS ARE NEEDED. 13 THE COURT: WELL, WHAT IF ON THE COMMON ISSUES I 14 MIGHT BE AMENABLE TO HAVING BRIEFING OF 14, 14, AND 10. I 15 WOULD LIKE TO GO EVEN LOWER THAN THAT BECAUSE I THINK SOME OF 16 THAT IS GOING TO BE OVERLAPPING WITH CLASS CERT. 17 THE RULE OF REASON VERSUS PER SE, THAT OBVIOUSLY SHOULD BE 18 BRIEFED, AND WE HAVEN'T REALLY DONE THAT YET. IT WAS SLIGHTLY 19 TOUCHED UPON, A MOTION TO DISMISS, BUT IT HASN'T BEEN THUS 20 FAR -- 21 I'M JUST -- I'M JUST CONCERNED ABOUT JUST HUMAN LIMITS ON 22 WHAT WE CAN DO IN ONE SUMMARY JUDGMENT HEARING. THAT'S MY 23 CONCERN. 24 MR. MITTELSTAEDT: OKAY. YOUR HONOR, WHAT -- WHAT -- 25 WE WILL TRY TO DO THAT. I THINK --</p>	<p>15</p> <p>1 SPACE -- SUFFICIENT PAGE LIMITS, AND THEN WE END UP SOME -- 2 ONE OR MORE OF THESE DEFENDANTS END UP GOING TO TRIAL, WHERE 3 IF WE TOOK ADEQUATE TIME -- SO, YOUR HONOR -- 4 THE COURT: WELL, LET'S DO 14, 14, AND 10 ON THE 5 COMMON ISSUES. THAT WILL BE THE RULE OF REASON VERSUS PER SE. 6 ON SUFFICIENCY OF THE EVIDENCE, I JUST THINK THAT'S GOING TO 7 BE HARD TO WIN ON SUMMARY JUDGMENT. 8 MR. MITTELSTAEDT: WELL, MAYBE THAT'S WHY WE NEED 9 MORE -- 10 THE COURT: I DON'T WANT TO PREJUDGE IT. I DON'T 11 WANT TO PREJUDGE IT, BUT I MEAN, THIS IS A REALLY, REALLY RICH 12 RECORD, SO I'M JUST GOING TO ASK YOU ALL -- I MEAN, IF YOU 13 FEEL LIKE YOU NEED TO MAKE IT, YOU KNOW, TO ESTABLISH YOUR 14 RECORD AND TO BE A ZEALOUS ADVOCATE FOR YOUR CLIENT, BY ALL 15 MEANS. 16 BUT I'M GOING TO ASK YOU TO PLEASE BE KIND TO US AS WELL. 17 MR. MITTELSTAEDT: OKAY. 18 THE COURT: I WOULD LOVE -- THIS IS A FASCINATING 19 CASE. I WOULD LOVE TO GIVE YOU UNLIMITED RESOURCES, BUT I 20 JUST CAN'T BECAUSE OF CASELOAD. 21 MR. MITTELSTAEDT: I UNDERSTAND THAT, YOUR HONOR, BUT 22 IT'S ALMOST -- WHEN YOU SAY THAT YOU THINK WE'VE GOT AN UPHILL 23 BATTLE ON SUMMARY JUDGMENT -- 24 THE COURT: YEAH. 25 MR. MITTELSTAEDT: -- I FEEL LIKE I SHOULD ASK FOR</p>
<p>14</p> <p>1 IS THAT OKAY? 2 -- IF -- IF WE HAVE SUFFICIENT ROOM IN THE INDIVIDUAL 3 BRIEFS FOR THE -- FOR WHAT I WOULD CONSIDER TO BE THE MAIN 4 ISSUE. 5 THE COURT: SO MY CONCERN IS MARCH 5TH, I HAVE THE 6 FINAL PRETRIAL CONFERENCE IN THE SECOND APPLE V. SAMSUNG. 7 THAT'S GOING TO TRIAL MARCH 31, SO IT'S JUST GOING TO BE A 8 VERY INTENSE TIME. AND THEN MARCH 20TH, ABOUT 2 WEEKS LATER, 9 WE HAVE SUMMARY JUDGMENT DAUBERT MOTIONS IN THIS CASE, SO MY 10 JUST CONCERN IS THAT WE'RE JUST NOT GOING TO BE ABLE TO HANDLE 11 IT PHYSICALLY. 12 NOT THAT WE DON'T THINK YOUR CASE IS IMPORTANT AND YOU 13 DESERVE MUCH, MUCH MORE IN TERMS OF COURT RESOURCES THAN 14 YOU'RE GETTING, AND I APOLOGIZE FOR THAT, BUT I'M JUST 15 CONCERNED WITH ALL THE VACANCIES ON OUR COURT, I'M NOT SURE IF 16 WE'LL BE ABLE TO HANDLE IT JUST -- OUR SMALL TEAM VERSUS ALL 17 OF YOUR VERY EXPERT AND LARGE TEAMS. 18 IT'S -- WE'RE JUST COMPLETELY OUTNUMBERED AND OVERWHELMED. 19 THAT'S MY CONCERN. 20 MR. MITTELSTAEDT: I CAN COMMIT TO YOUR HONOR THAT WE 21 WILL WORK VERY HARD ON THIS SIDE TO KEEP THESE BRIEFS AS SHORT 22 AS POSSIBLE. I THINK THE LONGER-TERM ISSUE, THOUGH, IS -- I 23 MEAN, LET'S SAY WE'VE GOT A GOOD SUMMARY JUDGMENT MOTION -- 24 THE COURT: UM-HMM. 25 MR. MITTELSTAEDT: -- BUT WE DON'T HAVE SUFFICIENT</p>	<p>16</p> <p>1 MORE PAGES 'CAUSE I'M GOING -- 2 THE COURT: NO, BECAUSE -- 3 (SIMULTANEOUS COLLOQUY.) 4 MR. MITTELSTAEDT: -- PERSUADE YOU. 5 THE COURT: I MEAN, WE'LL HAVE TO SEE WHAT HAPPENS, 6 OBVIOUSLY. I -- I HAVE NOT REVIEWED THE MOTION THAT WAS JUST 7 FILED FOR CLASS CERT, SO I DON'T KNOW THE CURRENT LAY OF THE 8 LAND. BUT I THINK 14, 14, 10 SHOULD BE SUFFICIENT TO ADDRESS 9 THE ISSUES THAT YOU'VE RAISED. WE CAN HAVE A SEPARATE SUMMARY 10 JUDGMENT MOTION WHERE YOU ADDRESS INDIVIDUAL CONCERNS, AND, 11 YOU KNOW, TO BE FRANK, SOME OF YOU HAVE BETTER CASES THAN 12 OTHERS ON YOUR INDIVIDUAL CLAIM. 13 BUT I'M GOING TO GIVE YOU A TOTAL NUMBER OF -- OF PAGES 14 AND YOU ALL DUKE IT OUT AMONGST YOURSELF WHO GETS HOW MANY. I 15 MEAN, OTHERWISE, IT'S GOING TO BE A DEFAULT OF -- I'D GO UP TO 16 42, 42, 32. WHAT ABOUT THAT? I MEAN, THAT'S ROUGHLY 7 -- I'M 17 SORRY -- 6 PAGES PER DEFENDANT, BUT YOU MAY WANT TO ALLOCATE 18 IT SLIGHTLY DIFFERENTLY. 19 MR. MITTELSTAEDT: IS THAT IN ADDITION TO THE 14? 20 THE COURT: THAT'S IN ADDITION. I -- I JUST THINK 21 THAT WE CAN'T HANDLE ANY MORE. I'M REALLY SORRY. WE'RE GOING 22 TO BE STARTING -- WE'RE GOING TO BE STARTING A SECOND TRIAL. 23 MR. MITTELSTAEDT: I DON'T KNOW IF I CAN NEGOTIATE 24 WITH THE COURT. WOULD YOU GO TO 50? 25 THE COURT: I JUST THINK WE CAN'T -- I'M SORRY. I</p>

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<p>SHEET 7</p> <p>25</p> <p>1 I MEAN, WE'LL PROBABLY BE PREPARING EVERYTHING TOGETHER, 2 BUT AT LEAST IT RELIEVES A LITTLE BIT OF THE PRESSURE OF 3 HAVING TO GIVE YOU EVERYTHING ALL AT ONCE. 4 MR. MITTELSTAEDT: I THINK IT WOULD MAKE SENSE IF 5 YOUR -- COURT'S CALENDAR WOULD PERMIT THIS, TO HAVE TWO 6 HEARING DATES. 7 THE COURT: UH-HUH. 8 MR. MITTELSTAEDT: I'M NOT SO SURE DIVIDING THEM 9 BETWEEN ALL THE SUMMARY JUDGMENTS AND ALL THE DAUBERT'S IS THE 10 BEST WAY TO DO IT, BECAUSE THEY MAY BE RELATED. 11 THE COURT: SURE. THEN HOW SHOULD WE DIVIDE IT UP, 12 THOUGH? 13 MY GUESS IS THE PLAINTIFFS' MOTION IS GOING TO BE KIND OF 14 OTHER SIDE OF THE COIN OF YOUR MOTION IN SOME RESPECT. 15 THERE'S GOING TO BE A LOT OF OVERLAP. SHOULD WE JUST DO 16 COMMON ISSUES FIRST, AND THEN DO INDIVIDUALS SECOND? WOULD 17 THAT BE A BETTER WAY TO BREAK IT UP. 18 MR. MITTELSTAEDT: I DON'T KNOW, AND WHAT I WOULD 19 SUGGEST IS WE SET TWO HEARINGS NOW, AND WE TRY AND MEET AND 20 CONFER AND CONSULT WITH YOUR HONOR ABOUT HOW TO BREAK THEM UP 21 ONCE WE KNOW WHAT THEY ARE. I THINK THAT'S -- 22 THE COURT: THAT'S FINE. THAT'S FINE, BUT LET'S GO 23 AHEAD -- I'M JUST CONCERNED THAT WE'RE NOT GOING TO -- THIS 24 WOULD BE A LOT TO HANDLE IN ONE WEEK, SO LET'S GO AHEAD AND 25 SET TWO DATES.</p>	<p>27</p> <p>1 MR. MITTELSTAEDT: IF IT'S OKAY, I THINK, YOUR HONOR, 2 JOE AND I SHOULD TALK ABOUT THAT. 3 MR. SAVERI: AND KELLY, TOO, OBVIOUSLY. 4 MR. MITTELSTAEDT: OKAY. ANYBODY WHO WANTS TO TALK 5 ABOUT IT CAN TALK ABOUT IT, BUT IT MAY BE THAT THE DAUBERT'S 6 ARE CLOSELY RELATED TO THE MO- -- PARTICULAR SUMMARY 7 JUDGMENT -- 8 THE COURT: SURE. 9 MR. MITTELSTAEDT: -- AND IT MAKES SENSE TO HEAR 10 THAT, BUT I THINK THAT'S A DETAIL WE CAN WORK OUT. 11 THE COURT: OKAY. 12 MR. SAVERI: I AGREE. I MEAN, I THINK WE COULD TRY 13 TO MIX AND -- 14 THE COURT: UH-OH. IS THERE BAD NEWS? 15 THE CLERK: I DON'T THINK SO, BUT I HAD JUDGE LLOYD'S 16 CALENDAR UP, AND SO HE HAD NOTHING ON MARCH 27TH. WE DO HAVE 17 THE LAST DAY FOR DISPOSITIVE MOTIONS ON DELGADO VS. DEANDA AS 18 WELL AS HERSKOWITZ. 19 THE COURT: OH, OKAY. I THINK THAT'S OKAY. ON THE 20 27TH. I THINK THE BIGGER PROBLEM IS THE MARCH 31. WE'RE 21 GOING TO BE PRETTY BUSY GETTING JURY INSTRUCTIONS AND OTHER 22 THINGS READY. 23 OKAY. SO -- ALL RIGHT. SO WHY DON'T WE DO THIS: CAN YOU 24 ALL MAKE A RECOMMENDATION -- LET'S SEE. YOU'RE FINISHED 25 FILING ON FEBRUARY 27TH. WHY DON'T YOU MAKE A RECOMMENDATION</p>
<p>26</p> <p>1 ONE WE'LL KEEP, WHICH IS MARCH 20TH OF 2014 AT 1:30. THE 2 OTHER ONE'S GOING TO BE THE NEXT WEEK, MARCH 27TH, 2014 AT 3 1:30, AND WE CAN DECIDE AT A LATER TIME HOW TO BREAK THAT UP. 4 OKAY? 5 MR. MITTELSTAEDT: DO YOU -- 6 MR. SAVERI: I'M SORRY, YOUR HONOR. 7 THE COURT: YEAH, GO AHEAD, PLEASE. 8 MR. SAVERI: IT MAY -- IT MAY MAKE SENSE TO DO THE 9 702'S -- MOTIONS BEFORE THE SUMMARY JUDGMENT MOTIONS. I MEAN, 10 THAT WOULD BE ONE THING I THINK WE SHOULD -- I AGREE WE SHOULD 11 GET THE HEARINGS AND WE SHOULD TALK ABOUT -- AS I'M THINKING 12 THIS THROUGH, ONE -- ANOTHER WAY TO DO IT, WHICH I'VE DONE IN 13 THE PAST, IS TO DO THE 702 MOTIONS FIRST. 14 THE COURT: FIRST. OKAY. 15 MR. SAVERI: BECAUSE THEN, IT SEEMS TO ME, TO SOME 16 EXTENT, YOU'VE CLEARED OUT SOME OF THE ISSUES THAT MAY -- 17 WOULD OTHERWISE COME UP AT SUMMARY JUDGMENT. THERE MAY BE 18 SOME LOGIC TO THAT, BUT I'M HAPPY TO HAVE A CONVERSATION ABOUT 19 THAT. 20 THE COURT: OKAY. I THINK THAT'S FINE. 21 NOW, WE WOULD PROBABLY BE ABLE TO HANDLE SOMETHING MORE 22 THAN JUST THE DAUBERT'S THEN. SO MAYBE WE CAN PICK ONE OF THE 23 SUMMARY JUDGMENT HEARINGS TO DO WITH THE DAUBERT MOTIONS AT 24 THAT FIRST HEARING DATE, AND THEN HAVE THE SECOND SUMMARY 25 JUDGMENT MOTION HEARD THE SECOND ONE, OR SOMETHING LIKE THAT.</p>	<p>28</p> <p>1 MAYBE A WEEK LATER? WHAT ABOUT ON MARCH 6TH? CAN YOU JUST 2 PLEASE MAKE A RECOMMENDATION AS TO HOW YOU -- YOU'VE MET AND 3 CONFERRED AND WHAT YOU THINK IS THE BEST DISTRIBUTION OF THE 4 VARIOUS MOTIONS FOR THE 20TH VERSUS THE 27TH OF MARCH. 5 MR. MITTELSTAEDT: WE WILL DO THAT. 6 THE COURT: OKAY. 7 MR. SAVERI: AND, AGAIN, YOUR HONOR, JUST SO I HAVE 8 IT CLEAR, BOTH ON THE 20TH AND 27TH, WE ARE -- WE HAVE 1:30 -- 9 THE COURT: YES, PLEASE. 10 MR. SAVERI: ONE -- OKAY. 11 THE COURT: JOINT STATEMENT RE: DISTRIBUTION OF 12 MOTIONS. GREAT. FOR MARCH 20 AND 27 HEARING DATES. 13 OKAY. NOW, LET'S TALK ABOUT THE DAUBERT'S. I WANT TO 14 STRONGLY ENCOURAGE YOU TO RESTRICT THESE FURTHER AND -- AND 15 THE REASON IS THAT, YOU KNOW, MOST LIKELY, THINGS ARE GOING TO 16 GOING TO WEIGHT AND NOT ADMISSIBILITY. DAUBERT, YOU KNOW, THE 17 LIKELIHOOD THAT SOMEBODY WOULD BE STRUCK COMPLETELY, PROBABLY 18 NOT LIKELY. MAYBE SOME THEORIES POSSIBLY. 19 WHAT -- CAN WE HAVE -- I'M JUST CONCERNED THAT I'M HEARING 20 POTENTIALLY THREE TO FOUR, MAYBE FIVE EXPERTS PER SIDE, AND 21 THEN YOU WANT, YOU KNOW, 30 PAGES OF BRIEFING FOR 10 EXPERTS 22 POTENTIALLY. THAT'S JUST -- I JUST DON'T THINK WE CAN HANDLE 23 THAT EVEN WITH THE TWO HEARING DATES, SO WHAT -- LET ME GET A 24 CONCESSION FROM YOU ALL IF THERE CAN BE FURTHER NARROWING IF 25 POSSIBLE, PLEASE.</p>

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SHEET 13

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1 PERSPECTIVE.

2 SO, YOUR HONOR, HOW ABOUT IF WE JUST LEAVE THAT -- THAT
3 DEADLINE FOR SUBMITTING THE STATUS REPORT?

4 THE COURT: OKAY.

5 MR. MITTELSTAEDT: JULY 19TH, WE'LL REPORT. AND, YOU
6 KNOW, IF THERE'S SOMETHING TO REPORT THREE DAYS LATER, WE'LL
7 REPORT THAT AS WELL.8 MS. DERMODY: IT MAY MAKE SENSE, GIVEN JUST THE
9 AVAILABILITY OF MEDIATORS THAT PARTICULAR WEEK, JUST TO DO IT
10 ON THE 22ND IN THE MORNING IN CASE WE'RE ACTUALLY MEETING ON
11 THE 19TH. THAT'S THE ONLY RESERVATION --12 MR. MITTELSTAEDT: I THINK HE HAS DATES IN JUNE,
13 THOUGH.

14 MS. DERMODY: THERE'S ANOTHER GUY WE'RE TALKING TO --

15 MR. MITTELSTAEDT: OH.

16 MS. DERMODY: -- SO THERE'S A WHOLE -- YEAH.

17 THE COURT: OKAY. I GUESS -- ALL RIGHT. SO YOU WANT
18 TO FILE A JOINT STATUS REPORT ON THE 22ND OF JULY?19 MS. DERMODY: YES. AND IT COULD -- YOU KNOW, EARLY
20 IN THE MORNING, YOUR HONOR, JUST WOULD ALLOW THE POSSIBILITY
21 THAT THE 19TH MIGHT BE A PRODUCTIVE DAY.22 THE COURT: OKAY. THEN COULD WE SAY BY 9:00 A.M. OR
23 10:00 A.M.? WHAT -- WHAT TIME DO YOU WANT?24 MR. SAVERI: I LIKE 10:00, ABOUT AN HOUR MORE THAN
25 9:00.

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2 CERTIFICATE OF REPORTER

3

4 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
5 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
6 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED TO,
7 NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS
8 HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR
9 OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

10

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12 _____
13 RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR
14 FRIDAY, MAY 31, 2013

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1 THE COURT: OKAY. SO 10:00 A.M. IS FINE. AND THAT
2 WILL LET US KNOW THAT IF THAT'S NOT RESOLVED, THEN, YOU KNOW,
3 WE NEED TO GUN IT THE NEXT THREE WEEKS TO GET READY FOR THE
4 8TH.

5 MR. SAVERI: YES, YOUR HONOR.

6 MS. DERMODY: THANKS, YOUR HONOR.

7 THE COURT: OKAY. SO THAT STILL GIVES YOU ABOUT
8 THREE WEEKS BEFORE THE HEARING. OKAY.

9 ALL RIGHT. WHAT ELSE? ANYTHING ELSE?

10 MR. MITTELSTAEDT: I DON'T THINK SO, YOUR HONOR.

11 THE COURT: NO? OKAY. THANK YOU ALL VERY MUCH. I
12 REALLY APPRECIATE IT.

13 MR. SAVERI: THANK YOU VERY MUCH.

14 THE COURT: THANK YOU. I'LL SEE YOU IN AUGUST.
15 (PROCEEDINGS WERE CONCLUDED AT 3:11 P.M.)16 --000--
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